

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

RECEIVED

SEP 23 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Parts 2, 73, 74 and 90 of the)
Commission's Rules to Permit) ET Docket No. 03-158
New York Metropolitan Area) MB Docket No. 03-159
Public Safety Agencies to Use)
Frequencies at 482-488 MHz)

COMMENTS OF CATHOLIC VIEWS BROADCASTS, INC.

By A. Wray Fitch III
Timothy R. Obitts
GAMMON & GRANGE, P.C.
8280 Greensboro Drive, Seventh Floor
McLean, Virginia 22102
(703) 761-5000

Counsel

DATED: September 23, 2003

File of Case - 03-158
List ABCDEF

0

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

| | | |
|--|---|----------------------|
| In the Matter of |) | |
| |) | |
| Amendment of Parts 2, 73, 74 and 90 of the |) | |
| Commission's Rules to Permit |) | ET Docket No. 03-158 |
| New York Metropolitan Area |) | MB Docket No 03-159 |
| Public Safety Agencies to Use |) | |
| Frequencies at 482-488 MHz |) | |

COMMENTS OF CATHOLIC VIEWS BROADCASTS, INC.

Catholic Views Broadcasts, Inc. ("CVB"), a not for profit corporation and the permittee of a construction permit for new low power television station Channel 17, Plainview, New York, Commission call sign W17CR, by counsel, hereby submits comments pursuant to Section 1.415(a) of the Commission's rules, 47 C.F.R. §1.415(a), in response to the Notice of Proposed Rule-Making ("Notice") in the above-captioned proceeding.¹ CVB is very cognizant of the need for public safety, especially in light of the events of September 11, 2003, but also is concerned that the information provided as the basis of the Notice is incomplete and fails to comply with the Commission's Rules

The Commission must determine in this proceeding whether the television operation of adjacent channels, including W17CR, when built, interfere with the proposed public safety operations. 47 U.S.C. §337(c)(1)(B). In addition, the Commission must comply with 47 U.S.C. §337(d) and impose conditions necessary to: (1) establish interference limits at the boundaries of the spectrum block and service area, and (2) establish any additional technical restrictions necessary to

¹ These Comments are being filed on September 23, 2003, rather than the requested date of September 22, 2003. To the extent necessary, CVB requests that these comments be considered. Good cause exists to accept CVB's comments in light of the two day shut down of the FCC and disruption caused by Hurricane Isabel. In addition, the public interest is best served by consideration of a complete record

protect full-service analog television service and digital television service during a transition digital television service. The Notice and the Attachments thereto, fail to provide sufficient technical information for the Commission to satisfy its statutory obligations, or to permit independent analysis of the interference by the Commission, or by affected parties.

CVB is unable to participate meaningfully in this proceeding because of the lack of sufficient technical information. In fact, the only description by Vogel Consulting Group, Inc. in the Notice regarding “anticipated” interference, is a one sentence comment, lumping W17CR in with WEBR-CA. The Frequency Analysis prepared by Vogel Consulting Group, Inc., which is attached to the Notice, alleges that W17CR, when built, “it is anticipated that there will be similar [to WEBR-CA] interference to public safety land mobile operations from this source.” CVB’s consulting engineer is unable to perform independent interference analysis because of the utter lack of sufficient technical information.

Further, the Commission is under a duty to comply with Section 337 and determine if the proposal by New York Metropolitan Area Public Safety Agencies (“NYMAC”) meets its waiver requirements. The proposal by NYMAC fails to demonstrate that “no other spectrum allocated to public safety service is immediately available to satisfy the requested public safety use” as required by Section 337(c)(1)(A). The Commission is required to apply all of the requirements of Section 337 in determining if a waiver is appropriate and cannot use Section 303 as requested to circumvent these enumerated requirements.

In conclusion, the Notice and its attachments fail to provide the necessary technical information for meaningful inquiry and comments to the Notice and fails to comply with Section 337 of the Commission’s Rules. CVB, as an affected party, is entitled to fundamental due process rights which have not been afforded to it as required by the Administrative Procedures Act. CVB

respectfully requests that NYMAC be required to provide technical information with regards to W17CR that demonstrates its blanket statement of "anticipated" interference and allow CVB time to review the information and comment accordingly. Such detailed technical disclosures from NYMAC and time for additional public comment are in the public interest. If the Commission is inclined to grant the NYMAC request for waiver and reallocated Channel 16, as stated in the Notice, CVB respectfully requests that the Commission consider working with the affected parties on finding alternative channels for their respective use.

Respectfully submitted.

Catholic Views Broadcast, Inc

By. 

A. Wray Fitch III
Timothy R. Obitts
GAMMON & GRANGE, P.C.
8280 Greensboro Drive, Seventh Floor
McLean, Virginia 22102
(703) 761-5000

Its Attorneys

DATED: September 23, 2003